



# City of Tukwila

6200 Southcenter Boulevard • Tukwila, Washington 98188

Jim Haggerton, Mayor

April 17, 2012

U.S. Army Corps of Engineers  
Attn: CECW-CE, Tammy Conforti  
441 G Street NW  
Washington, DC 20314-1000

**RE: COE-2010-0007**

Dear Ms. Conforti:

The City of Tukwila has reviewed the draft vegetation variance request procedures and is encouraged the Corps of Engineers has made some changes including the addition of a system wide improvement framework (SWIF). However, the overall variance procedures remain unworkable and are not a viable option for the City to consider. Levee safety is important but so is protecting endangered species and treaty rights. The proposed PGL forces the City to choose one over the other, and we don't believe we should have to make such a stark choice. Our specific concerns are stated below:

1. The proposed rule will place the City in jeopardy of violating the Endangered Species Act (ESA) as well as the State Shoreline Management Act and will further set back efforts to restore salmon and other threatened or endangered species in the Northwest by not allowing vegetation plantings close to the water. The Washington Department of Ecology has recently released a TMDL study on the Green River which links levee vegetation removal to lethal water temperatures in critical summer periods. Maintaining all vegetation to the Corps of Engineers standards will further exacerbate this situation.
2. By placing the burden of ESA compliance on the local level, the Corps of Engineers is ignoring its responsibility to consult under Section 7 of the ESA. Section 7 of the ESA requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) for marine and anadromous species, or the United States Fish and Wildlife Service (FWS) for fresh-water and wildlife, if they are proposing an "action" that may affect listed species or their designated habitat. *Action* is defined broadly to include funding, permitting and other regulatory actions. To comply with federal regulations, the Corps of Engineers must consult with all federal agencies on the levee vegetation maintenance standards and develop an acceptable practice that allows for the safety of the levee system and is compliant with the ESA.
3. Relying on local sponsors to consult with federal agencies to develop a variance request and then submitting this request to the Corps of Engineers for approval puts an unacceptable financial burden on the local levee sponsor. This will divert limited funding and will reduce overall public safety.

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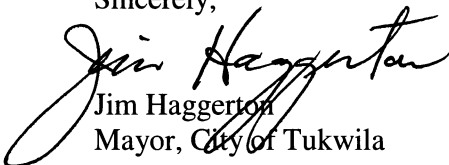
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4. The vegetation variance approval process as proposed is overly burdensome and requires approval at five different levels at the Corps of Engineers prior to implementation. A simplified, locally approved process should be established that takes into account local flow conditions, ESA requirements, and a streamlined approval process.
5. Regional variances that cover all levees within a geographical area are not permitted under this proposed rule. The Corps should allow similar levees within the same geographic area to be covered under the same variance.
6. The existing Northwest Regional Variance should remain in place and a process should be established that allows this approach. The Northwest Region's COE engineers know their levee systems and river flow characteristics best. There have not been any levee failures attributed to this regional variance, which has allowed local jurisdictions to improve habitat, at least minimally, until the vegetation reaches the size that requires removal. During this time period there have been a number of large storm events, which have tested the reliability of the local variance.
7. Experience in the Pacific NW shows that a planted mid-slope bench works extremely well both in improving habitat as well as slowing waters during storm events and providing a wider flood channel. Figure 3, of Enclosure 3, illustrates several options that are acceptable to the COE – however, adding a minimum of eight feet for a planting berm reduces the flood channel area and does not place the vegetation in close enough proximity to the channel to provide the habitat benefits needed. Implied in the proposed rule is the need for additional land area in order to ensure that there are not impacts to channel capacity. This in turn will increase the cost of the levee system improvements in terms of the amount of land acquisition needed for the ultimate levee profile.

In summary, the City of Tukwila is requesting that the Corps of Engineers consult with federal agencies to develop a national vegetation standard that is compliant with the ESA. If this is unworkable, a regional or sub-regional standard could be developed.

Please contact Bob Giberson at (206) 431-2457 if you have any questions on this issue or if you would like to meet to further discuss the City's concerns.

Sincerely,



Jim Haggerton  
Mayor, City of Tukwila

CC: Senator Patty Murray  
Senator Maria Cantwell  
Congressman Adam Smith